

HOUSE BILL 3273
By Buck

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 6, relative to workers compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-112, is amended by adding the following language as a new subsection to be designated as follows:

(e) Subrogation claims shall be reduced in third party actions where the negligence of the employer results in a reduction of the value of or damages recoverable by the injured employee. In the event that a compromise is reached or the case is settled before trial but after a lawsuit is filed but the parties are unable to reach an agreement on the amount of the subrogation interest, the trial judge shall hold a hearing to determine the equitable subrogation interest of the employer. The trial judge shall calculate the amount of the subrogation interest and incorporate the court's findings concerning the subrogation interest in the final judgment or settlement. The gross amount of the subrogation interest shall be based upon the following:

(1) To the extent that the employee is partially at fault in the incident giving rise to the litigation, the subrogation interest is reduced by the percentage of fault assessed against the employer;

(2) To the extent that the finder of fact allocated fault to a person who was immune from suit, the subrogation interest is reduced by the percentage of fault assessed against the immune person;

(3) To the extent that the finder of fact allocates fault to a governmental entity that has its liability limited under state law and the fault of the entity (when multiplied by the total dollar value of the damages found by the finder of fact) exceeds the amount of judgment that can be awarded against the entity, the

subrogation interest is reduced proportionately by a percentage derived by dividing the uncollectable portion of the judgment against the governmental entity by the total damages awarded; and/or

(4) To the extent that the finder of fact allocated fault to a person that the plaintiff did not sue, the subrogation interest is reduced by the percentage of fault assessed against the non-party.

After these calculations are performed, the judge should further reduce the subrogation interest pro rata by the amount of reasonable attorneys' fees and litigation costs incurred by the plaintiff in obtaining the recovery.

SECTION 2. This act shall take effect July 1, 2004, the public welfare requiring it.